

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RAMON SAUL SILVA,

Petitioner,

v.

DONALD R. HOLBROOK,

Respondent.

Case No. C22-282-LK-MLP

ORDER GRANTING MOTION FOR  
COPY OF THE RECORD AND DENYING  
MOTION FOR APPOINTMENT OF  
COUNSEL

This is a federal habeas action filed under 28 U.S.C. § 2254. Petitioner Ramon Silva, proceeding *pro se*, presented his federal habeas petition to the Court for filing on March 8, 2022. (Dkt. # 1.) The petition was served on Respondent, and on July 8, 2022, Respondent filed an answer to the petition together with relevant portions of the state court record. (*See* dkt. ## 5, 13-14.) On July 19, 2022, Petitioner filed a response to Respondent's answer (dkt. # 15) and, shortly thereafter, on July 25, 2022, Petitioner filed a notice of voluntary dismissal (dkt. # 16). This action was terminated upon receipt of Petitioner's notice of voluntary dismissal. However, on July 26, 2022, Petitioner submitted a motion asking that the Court disregard his request for

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1 voluntary dismissal. (Dkt. # 17.) On July 29, 2022, Petitioner's motion to disregard his request  
2 for voluntary dismissal was granted and the case was reopened. (Dkt. # 19.)

3 On August 2, 2022, after the case was reopened, Petitioner submitted for filing a motion  
4 to strike his notice of voluntary dismissal and to appoint counsel. (Dkt. # 20.) Petitioner indicated  
5 therein, as he had in his prior motion to disregard his request for voluntary dismissal, that he did  
6 not want this case dismissed. (*Id.*) Petitioner also indicated that he was requesting counsel, but  
7 only if the Court chose not to strike his request for voluntary dismissal. (*Id.*)

8 On August 16, 2022, Petitioner submitted for filing a motion asking that he be provided a  
9 copy of court records and that counsel be appointed. (Dkt. # 21.) Petitioner indicates therein that,  
10 while in the midst of the mental health crisis that caused him to seek voluntary dismissal of this  
11 action, he destroyed all of his court documents and he appears to ask that he be provided a copy  
12 of the state court record previously submitted by Respondent. (*Id.* at 1.) He also requests therein  
13 appointment of counsel, apparently based on the current state of his mental illness. (*Id.* at 2.)  
14 Finally, Petitioner requests in his second motion that health information contained in his motion  
15 be redacted. (*See id.* at 1.) Respondent has not filed a response to either of Petitioner's motions.

16 The first of Petitioner's two motions (dkt. # 20) is effectively moot because Petitioner  
17 had already been granted the relief he requested therein at the time the motion was filed, *i.e.*, the  
18 striking of his request for voluntary dismissal. The Court therefore turns to Petitioner's second  
19 motion. (Dkt. # 21.) To the extent Petitioner requests that he be provided another copy of the  
20 state court record submitted by Respondent in this case, the Court will grant that motion, albeit  
21 reluctantly given the size of the record and whether it will be useful to Petitioner in prosecuting  
22 this case.

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1 To the extent Petitioner seeks appointment of counsel in this matter, he has not  
2 demonstrated an entitlement to such relief. There is no right to have counsel appointed in cases  
3 brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required. *See Terravona v.*  
4 *Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); Rule 8(c) of the Rules Governing Section 2254  
5 Cases in the United States District Courts. However, the Court may exercise its discretion to  
6 appoint counsel for a financially eligible individual where the “interests of justice so require.” 18  
7 U.S.C. § 3006A.

8 At this juncture, it does not appear that an evidentiary hearing will be required in this  
9 matter, and Petitioner fails to demonstrate that the interests of justice require appointment or  
10 counsel. As noted above, the basis of Petitioner’s request for counsel is the current state of his  
11 mental health which he appears to assert has worsened recently because he is not currently on  
12 any medications, and because he is experiencing stress related to his impending release from  
13 incarceration. (Dkt. # 21 at 2.) The Court notes, however, that Petitioner has ably represented  
14 himself thus far in the litigation, despite his mental health issues. Moreover, the briefing in this  
15 matter is now complete and all that awaits is the Court’s determination of Petitioner’s petition.  
16 Appointment of counsel at this time does not appear to serve any purpose. Counsel will be  
17 appointed, as required, should the Court determine, upon closer review of the parties’  
18 submissions, that an evidentiary hearing is necessary.

19 Finally, to the extent Petitioner requests that health information in his motion be redacted,  
20 he provides no argument in support of this aspect of his motion. Because Petitioner provides no  
21 argument in support of this request for relief, it is not entirely clear what he believes should be  
22 redacted. The Court notes, however, that Petitioner submitted in support of his motion a part of a

1 mental health treatment plan prepared by one of his Washington Department of Corrections  
2 providers and that this may be the information he believes should be redacted. However,  
3 Petitioner placed his mental health at issue in submitting his motion and, in fact, the record as a  
4 whole is replete with references to his mental health issues and diagnoses. Petitioner fails to  
5 demonstrate that redaction is either necessary or appropriate.

6 Based on the foregoing, the Court hereby ORDERS as follows:

7 (1) Petitioner's motion to strike his notice of voluntary dismissal and to appoint  
8 counsel (dkt. # 20) is DENIED as moot.

9 (2) Petitioner's motion for a copy of the record (dkt. # 21) is GRANTED. Respondent  
10 is directed to provide Petitioner with a copy of his answer to Petitioner's petition and of the state  
11 court record submitted with the answer (dkt. ## 13-14) not later than *fifteen (15) days* from the  
12 date of this Order.

13 (3) Petitioner's motion for appointment of counsel and his motion to redact health  
14 information from his motion (dkt. # 21) are DENIED.

15 (4) The Clerk shall direct copies of this Order to Petitioner, to counsel for  
16 Respondent, and to the Honorable Lauren King.

17 DATED this 7th day of September, 2022.

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20 MICHELLE L. PETERSON  
21 United States Magistrate Judge  
22

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